



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY  
NORTHERN REGIONAL OFFICE  
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Matthew J. Strickler  
Secretary of Natural Resources

David K. Paylor  
Director

Thomas A. Faha  
Regional Director

## STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO PILOT TRAVEL CENTERS LLC

### SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.34:20, between the State Water Control Board and Pilot Travel Centers, LLC, for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

### SECTION B: Definitions

Unless the context indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Containment and cleanup" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

6. "Location" means the facility, land, road, storm drain(s) or state water(s) where the oil discharge occurred: at Flying J #749, 24279 Rogers Clark Blvd, Ruther Glen, VA 22546.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
8. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
9. "Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity. *See* Va. Code §62.1-44.34:14.
10. "Operator" means any person who owns, operates, charters, rents or otherwise exercises control over or responsibility for a facility or a vehicle or vessel.
11. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
12. "Person" means any firm, corporation, association or partnership, one or more individuals, or any governmental unit or agency thereof.
13. "Pilot Travel Centers" means Pilot Travel Centers LLC, a limited liability company authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Pilot Travel Centers, LLC is a "person" within the meaning of Va. Code § 62.1-44.3.
14. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 11 (Va. Code §§ 62.1-44.34:14 through 62.1-44.34:23) of the State Water Control Law addresses discharge of oil into waters.
15. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
16. "Va. Code" means the Code of Virginia (1950), as amended.
17. "VAC" means the Virginia Administrative Code.
18. "VDEM" means Virginia Department of Emergency Management.
19. "Vehicle" means any motor vehicle, rolling stock or other artificial contrivance for transport whether self-propelled or otherwise, except vessels.

### **SECTION C: Findings of Fact and Conclusions of Law**

Pilot Travel Centers is a limited liability company which owns travel and refueling stations for private and commercial vehicles, including the Flying J #749 facility, located at 24279 Rogers Clark Blvd, Ruther Glen, VA 22546.

1. On June 12, 2018, DEQ received notification from the Virginia Department of Emergency Management of a discharge of oil, in the form of diesel fuel, at the Location.
2. The notification indicated that on June 12, 2018, a tanker truck affiliated with Barnes Transportation Services, Inc. accessing the Flying J facility struck a diesel dispensing station. The accident resulted in a break in diesel fuel piping below the shear valve on the dispenser, and a discharge of diesel fuel onto the ground surface. Underground containment equipment prevented fuel release beneath the surface. DEQ staff responded to the incident that same day. The 2,400 gallons of diesel fuel spilled onto the asphalt parking lot, and into trench drains and the storm drain inlet on the property. The storm drain inlet primarily discharged into an on-site stormwater management pond (SWMP), which later discharged through (VPDES Permit # VA0092657) permitted Outfall 002 into an unnamed tributary (UT) of the North Anna River. A small volume of diesel was funneled by the trench drains to the onsite oil/water separator (OWS). This UT stream was assessed as “not supporting” aquatic life due to pH impairment 2.75 miles downstream in the 2016 Integrated Report. DEQ staff observed Oil and sheen across the parking lot, SWMP, and UT on June 12, 2018. Diesel fuel spill estimates were made using the facility’s fuel monitoring system.
3. Caroline County Fire Department and Fredericksburg HazMat first responded to the scene to attempt to secure the leak and prevent it from discharging into the storm drain and state waters. Apex Environmental was contracted by Pilot Travel Centers to perform containment and cleanup using petroleum absorbent booms at the SWMP, the outfall concrete culvert, and at the UT stream; and with VAC trucks. An underflow dam was erected 400 meters downstream of the outfall to the UT, and trench drains and the OWS were cleared of debris and fuel. An incorrect pump shut-off was activated in the initial response, but was soon after corrected. This mistake allowed for the continued discharge of an unknown amount of fuel, in excess of what would have discharged had the error not occurred.
4. DEQ staff observed First Call Environmental and Apex Environmental on scene on June 13 and 14, 2018, performing further containment and cleanup as well as monitoring booms/pads. DEQ again followed up at the site on June 20, 2018, and observed no petroleum odor or free product on the SWMP, and only a small amount of emulsified petroleum product in the UT. Absorbent pads and booms remained in place. Per the “5-day written report of non-compliance” correspondence from the Facility’s environmental contractor, Dynamis, Inc.: TPH was detected by Facility staff at 19.3 mg/L on June 20, 2018, in the SWMP’s Outfall to state waters, but diluted to below the permit limits of 15

mg/L when resampled on July 10, 2018. The June 20, 2018 exceedance is not included as part of this order.

5. Va. Code § 62.1-44.34:18 prohibits the discharge of oil into or upon state waters, lands, or storm drain systems that violate applicable water quality standards or cause a film or sheen upon or discoloration of the surface of the water.
6. On July 9, 2018, the Department issued Notice of Violation No. W2018-07-N-001 to Pilot Travel Centers for a discharge of oil to state waters.
7. On August 21, 2018, Apex Environmental submitted a Spill Response and Cleanup Report. This report details previously identified incident details, plus:
  - a. Apex asserts it inspected the property on 20 occasions from June 14 to August 13, 2018 to: (1) monitor/recover diesel fuel, and replace absorbent materials as necessary; (2) inspect and clean trench drains and OWS; & (3) transport 14,845 gallons of diesel fuel and impacted water, and 15.44 tons plus twenty 55-gallon drums of spent absorbent materials/sand offsite to Reco Biotechnology (Richmond, VA) and Atlantic Industrial Services (Chester, VA).
8. In response to this letter and site visits by DEQ PReP staff, and after meeting with Apex and Pilot representatives on August 14, 2018, DEQ considers containment and cleanup to be completed.
9. Based on the results of June 12, 2018 site inspection, the State Water Control Board concludes that Pilot Travel Centers has violated Va. Code § 62.1-44.34:18, which prohibits the discharge of oil into or upon state waters, lands, or storm drain systems, as described in paragraphs C(1) through C(8), above.
10. In order for Pilot Travel Centers to complete its return to compliance, DEQ staff and representatives of Pilot Travel Centers have agreed to the payment of a Civil Charge and Investigation Reimbursement, as discussed in Section D, below.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code § 62.1-44.34:20, the Board orders Pilot Travel Centers LLC, and Pilot Travel Centers LLC agrees to:

1. Pay a civil charge of **\$7,207.20** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.
2. Reimburse DEQ **\$569.87** for oil discharge investigative costs within 30 days of the effective date of the Order;

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Pilot Travel Centers LLC shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Petroleum Storage Tank Fund (VPSTF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Pilot Travel Centers LLC shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Pilot Travel Centers LLC for good cause shown by Pilot Travel Centers, LLC, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. W2018-07-N-001 dated July 9, 2018. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Pilot Travel Centers LLC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Pilot Travel Centers LLC consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Pilot Travel Centers LLC declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by Pilot Travel Centers LLC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Pilot Travel Centers LLC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Pilot Travel Centers LLC shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Pilot Travel Centers LLC shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Pilot Travel Centers LLC. Nevertheless, Pilot Travel Centers LLC agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Pilot Travel Centers LLC has completed all of the requirements of the Order;

- b. Pilot Travel Centers LLC petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Pilot Travel Centers LLC.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Pilot Travel Centers LLC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by Pilot Travel Centers LLC and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of Pilot Travel Centers LLC certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Pilot Travel Centers LLC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Pilot Travel Centers LLC.
- 14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
- 15. By its signature below, Pilot Travel Centers LLC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 9<sup>th</sup> day of January, ~~2018~~ 2019.

  
Thomas Faha Regional Director  
Department of Environmental Quality

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Pilot Travel Centers LLC voluntarily agrees to the issuance of this Order.

Date: 10-25-18 By: [Signature], Director of Environmental  
(Person) (Title)  
Pilot Travel Centers LLC

State of Tennessee  
County of KNOX

The foregoing document was signed and acknowledged before me this 25<sup>th</sup> day of  
October, 2018, by Joey Cupp who is  
Director of Environmental of Pilot Travel Centers LLC, on behalf of the company.

[Signature]  
Notary Public

Registration No. \_\_\_\_\_

My commission expires: 7-27-22

Notary seal:

